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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,914	09/20/2005	Yasumi Yugari	2005_1461A	4790
513	7590	06/30/2011		
WENDEROTH, LIND & PONACK, L.L.P.				EXAMINER
1030 15th Street, N.W.,				FRAZIER, BARBARA S
Suite 400 East			ART UNIT	PAPER NUMBER
Washington, DC 20005-1503			1611	
			NOTIFICATION DATE	DELIVERY MODE
			06/30/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/549,914	<b>Applicant(s)</b> YUGARI ET AL.
	<b>Examiner</b> BARBARA FRAZIER	<b>Art Unit</b> 1611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 January 2010.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 3-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 3-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

- 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Status of Claims***

1. Claims 1 and 3-10 are pending in this application. Claim 2 stands canceled.
2. Claims 1 and 3-10 are examined.

***Priority***

3. Receipt is acknowledged of translation of priority papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file. Accordingly, the effective filing date of the instant application is 26 March 2003.

***Claim Rejections - 35 USC § 112***

4. The rejection of claims 1 and 3-10 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of Applicant's argument that pages 7-8 of the specification provides support for the claims as currently written.

***Response to Arguments***

5. Applicant's arguments, see page 3 of Response filed 19 April 2011, with respect to the rejection(s) of claim(s) 1 and 3-10 under 35 U.S.C. 103 (specifically, that Applicants have perfected priority to JP 2003-086141 by filing a certified English translation) have been fully considered and are persuasive. Therefore, the rejection has

been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Mauren et al (see paragraph 8, below).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakashima et al (US Patent 5,126,143) in view of Farmer (US Patent 6,461,607) and FR 2244464 (“FR ‘464”; previously cited), as evidenced by Lasater et al (US Patent 5,200,218), and further in view of Mauren et al (WO 99/48506; a machine translation is included with this Action).**

The claimed invention, as amended, is drawn to a food composition for lowering blood concentration of low- molecular-weight nitrogen-containing compounds, which comprises: a foodstuff comprising a) more than 5% by weight of water-soluble indigestible polysaccharides relative to a total amount of the foodstuff, said indigestible polysaccharides capable of being decomposed by intestinal bacteria, b) *Bacillus coagulans*, c) a metal-containing yeast comprising 0.01% to 5.0% by weight of a trace metal selected from the group consisting of Mg, Zn, Fe, Cu, Co and Mn relative to the

total amount of the foodstuff, and d) a protein component of 8% or less by weight relative to the total amount of the foodstuff (see claim 1).

Nakashima et al teach a bowel-movement-improving food containing 10-50% by weight of dietary fibers based upon the whole product (see claim 1). Nakashima et al. teach foods having more than 5% by weight indigestible polysaccharides; see Example 1, which has 25% dietary fibers (18 parts polydextrose and 6.9 parts pectin, relative to 100.3 total parts). The amount of protein in the food is less than 8%; amounts of 6% and 5.4% casein are exemplified (see, for example, Examples 1 and 4). The dietary fibers are decomposed by intestinal microorganisms (see Examples 1, 4 and 5). Nakashima et al further teach that the food products may also contain minerals, such as iron lactate (col. 4, lines 32-37).

Nakashima et al do not specifically teach the presence of *Bacillus coagulans*; additionally, while Nakashima et al teach the presence of minerals such as iron in its composition, Nakashima et al do not specifically teach that the mineral is in the form of a yeast comprising 0.01% to 5% by weight of the mineral.

Farmer teaches the utilization of lactic acid-producing bacteria, preferably *Bacillus coagulans*, for control of gastrointestinal tract pathogens and their associated diseases (abstract), and that *Bacillus coagulans* strains have been used as general nutritional supplements and agents to control constipation and diarrhea in humans and animals (col. 14, lines 50-53).

FR '464 teaches a composition comprising yeast, a lactobacillus, and B vitamins, for treatment of conditions including constipation and digestive disorders (see 4<sup>th</sup>, 8<sup>th</sup>,

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and 10<sup>th</sup>-15<sup>th</sup> paragraphs of the translation); the yeast is preferably *Saccharomyces cerevisiae* (i.e., Brewer's yeast; see 6<sup>th</sup> paragraph of the translation). Brewer's yeast is a metal-containing yeast comprising metals such as iron; as evidence, Lasater et al generally teach that Brewer's yeast includes iron (col. 2, lines 56-63). FR '464 does not specifically teach the amount of iron in the Brewer's yeast.

Mauren et al teach compositions for pharmaceutical use and/or use as a nutrition supplement, for humans or animals, which contain at least one metal yeast (abstract). A significant advantage of the composition is the presence of at least one metal-containing yeast, which is particularly rich in vitamin B1, B2, B3, B6, biotin, niacin and/or folic acid; due to the high vitamin content in the yeast, the carbohydrate metabolism and functioning of the nervous system improves. The metal recovery from the yeast is also improved due to the vitamin B6 content (see paragraph bridging pages 1-2 of the translation). The metal-yeast comprises selenium, copper, manganese, iron, zinc, magnesium, vanadium, chromium and/or calcium as the metal, in amounts preferably between 0.003% and 5 wt% based on the composition (page 2, 2<sup>nd</sup> and 12<sup>th</sup> full paragraphs of translation). The compositions are also useful for treating metabolic diseases, nutritional deficiency diseases, and to strengthen the immune system (page 3, 8<sup>th</sup> full paragraph of translation).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to add *Bacillus coagulans* and metal-containing yeast to the composition of Nakashima et al; thus arriving at the claimed invention. One skilled in the art would have been motivated to add *Bacillus coagulans* because the addition of

Bacillus coagulans provides the benefits of controlling constipation and diarrhea, as taught by Farmer. Additionally, it is *prima facie* obvious to combine two compositions, each of which is taught by the prior art, to be useful for the same purpose, in order to form a third composition to be used for the very same purpose. See MPEP 2144.06. Additionally, since the combination of mineral and yeast as metal containing yeast, with amounts of metal comparable to those of the claimed invention, provides the benefits of improved carbohydrate metabolism and improved nervous system functioning, as well as improved immune system functioning, taught by Mauren, one skilled in the art would be motivated to add metal containing yeast in order to provide said additional nutritional benefits, as well as providing the benefit of treating constipation and other digestive disorders, as taught by FR '464. Furthermore, since Mauren teaches its compositions provide improve immune system and nervous system functioning, one skilled in the art would be further motivated to substitute the normal Brewer's yeast taught by FR '464 with the metal-enriched yeast of Mauren in order to further improve the nutritional content of the resultant composition.

Regarding the phrase "for lowering blood concentration of low-molecular-weight nitrogen-containing compounds", said phrase describes an intended use for the food and does not provide any structural limitation to the composition, and thus is not given patentable weight.

Regarding claim 3, Nakashima et al. disclose that dietary fibers which may be used are polydextrose and pectin (see col. 3, lines 20-22 and claim 1).

Regarding claim 4, Nakashima et al. disclose that the food contains a mixture of polydextrose and pectin, wherein said mixture is comprised of 1/2 to 3/4 polydextrose and 1/2 to 1/4 pectin. This reads on Applicant's ratio of 0.05 to 100 parts by weight of pectine to 100 parts of polydextrose.

Regarding claims 5 and 6, Nakashima et al. disclose that the foods may contain vitamins (col. 4, lines 32-38).

Regarding claims 7-10, Nakashima et al. disclose that the food may be in the form of the wafer; the term "wafer" reads on a reasonable interpretation of either "biscuit", "cookie" or "bread".

***Conclusion***

No claims are allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARBARA FRAZIER whose telephone number is (571)270-3496. The examiner can normally be reached on Monday-Thursday 9am-4pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571)272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BSF

/Joanne Hama/  
Primary Examiner, Art Unit 1632